

ABOUT MATERNITY LEAVE

In Ontario today, maternity leave is recognized in law as a right of the pregnant employee in order to provide a minimum standard of job security. The legal provisions for maternity leave — subject to certain conditions — as well as protection against dismissal because of pregnancy are contained in the Ontario Employment Standards Act.

However, the administration of this legislation is the responsibility of the Women's Bureau of the Ontario Human Rights Commission, and any enquiries about maternity leave and its related concerns should be directed to the Women's Bureau.

The legal right to maternity leave imposes on the employee the obligation to use this guarantee of job security in a responsible way. In this spirit, the overall objective of maternity leave — to enable women workers to perform their dual role as mothers and members of the work force — will be to the mutual advantage of women and the economy of our province.

This brochure is intended to outline the main provisions of maternity leave and to answer some of the basic questions asked by both employers and employees.

What Does The Law Require?

The Act prohibits dismissal solely because of pregnancy, and provides for 12 weeks' *unpaid* maternity leave for employees who have worked for an employer for at least one year prior to the date she could commence the statutory leave (six weeks prior to expected date of birth). Companies with 25 or more employees of both sexes are bound by this legislation. The total number of employees are counted rather than the number employed in a particular location or branch.

Pre-Natal Leave: On presentation of medical certification indicating the expected date of delivery, an employee may initiate the leave at any time within six weeks prior to the birth. However, the employer may initiate the leave before the 6-week period if he can show that the employee cannot perform her normal duties adequately.

Post-Natal Leave: This is a fixed minimum period of six weeks unless the employee produces medical authorization for an earlier return to work. Longer post-natal leaves may be negotiated but such arrangements are then beyond the protection of the Act.

The intent of the legislation is that the employee should return to the *same* or a *comparable* position in terms of work setting, level of responsibility and remuneration, unless a longer leave has been negotiated. The Act does *not* provide for income maintenance or accumulation of seniority and benefits during maternity leave, but an employee

must not lose seniority or benefits which have accumulated up to the point of leave-taking. The provision relating to seniority and benefits provides for a minimum standard only and in no way affects more generous arrangements.

Are Some Employers Not Bound By This Law?

Companies or agencies under the jurisdiction of the federal government are governed by separate legislation. These include banks, transportation and communication industries such as radio, television, railway, airline and specific national industries of inter-provincial concern. Such companies are covered by the federal Canada Labour Code which also provides for a guaranteed maternity leave.

Employers with fewer than 25 employees are not obliged to grant maternity leave, although in practice they may prefer to do so in order to retain the valuable skills of their trained employees.

Who Is Eligible For Maternity Leave?

Any woman, married or unmarried, who has been continuously employed by a company for at least 12 months, or who *will have* been employed for 12 months by the time she can commence the statutory maternity leave (six weeks prior to expected date of birth) is eligible.

Interruption of employment for normal vacation, sick leave or other authorized leaves of absence, or temporary lay-off, is not considered a break in continuity of employment.

Are Part-Time Employees Covered?

Yes, regular part-time employees are eligible. This includes any employee who works at regular intervals (not necessarily the same hours) during part of a week or month. If such an arrangement has continued for at least one year, then the employee is entitled to the same provisions of maternity leave as the full-time employee.

When, And How Should The Leave Commence?

Because pregnancy is such a variable condition, the law recognizes that the procedures for initiating a leave should accordingly be determined on an *individual* basis. Depending on the nature of their work setting and general well-being, some employees may wish to work up to the time of confinement. Similarly, some employers may want a woman in a key function to remain on the job as long as possible. Normally, both employee and employer may benefit from more explicit plans in advance of the commencement of the leave. However, while the law provides for maximum flexibility in such arrangements, it also ensures that no pregnant employee may be compelled — either by an employer or by collective agreement — to begin her leave earlier than she intended, *providing* she is able to perform her work satisfactorily.

Basically then, the decision as to when she will begin her leave rests with the employee. It is reasonable to expect that she will give a period of notice in order that plans may be made to fill her post during her absence. The law does not require written notice in advance of taking the leave but does require the employee to present a doctor's certificate indicating expected date of birth.

While the law allows her to begin her leave at any time within six weeks before the expected birth, it is quite permissible to begin the leave earlier by mutual agreement with her employer, or by terms of a collective agreement.

What About Employee Benefits During Maternity Leave?

While Ontario law requires that any benefits or seniority accumulated up to the time of going on maternity leave be retained it *does not* provide for accumulation of such employee benefits during the actual leave. Thus, arrangements for regular payment of benefit premiums such as pension, health insurance, unemployment insurance, etc. should be worked out between the employer and employee prior to the leave since the law does not require employers to continue their share of contributions during maternity leave.

Does The Employee Have The Right To The Same Job?

Normally, the employee will return to the same or a comparable position held prior to commencing her leave. A comparable position is considered to be one which is similar in terms of work setting, remuneration and level of responsibilities.

However, it is recognized that in extraordinary circumstances this may not be possible in which case an alternative position in line with the employee's former position must be offered, or procedures which would have applied had she not been on leave should be followed.

Must The Employee Return At The End Of Six Weeks, Or Can She Take A Longer Leave?

Only if she returns at the end of the six weeks following delivery is the employee guaranteed the legal right to return to the same or a comparable position with no loss of seniority or benefits. Longer post-natal leaves may be arranged by mutual agreement with the employer, or negotiated through collective agreements but in such cases the type of job to which the employee will return is then beyond the jurisdiction of the legislation and is also open to negotiation. Therefore, if planning a longer leave, it is advisable to explicitly set out the terms and conditions of the employee's return status.

What About The Pregnant Employee Who Intends To Resign With The Birth Of Her Child But Who Wishes To Continue Working Until Confinement?

If a woman knows of her right to maternity leave but has formally indicated she will be terminating her employment, then she is not covered by the maternity leave legislation and may be treated as a resigning employee with due notice according to the provisions of the Employment Standards Act.

Can A Pregnant Woman Be Dismissed For Reasons Other Than Pregnancy?

Yes. Pregnancy does not protect the employee from dismissal for other valid reasons but pregnancy alone cannot be cause for dismissal.

Unemployment Insurance During Maternity Leave

A woman who ceases work because of pregnancy, whether or not she intends to return to work, is normally eligible for 15 weeks unemployment insurance benefits (nine weeks prior to expected date of birth which includes the confinement period and six weeks following). This eligibility requires a "major attachment" to the work force — that is, a woman who has 20 weeks or more of insured employment during the last year. She must further have had 10 weeks of insured employment between the 30th and 50th week before the expected date of confinement. There is a two week waiting period from the time of application until receipt of benefits for which the applicant does not receive any payment. Therefore, it is important for the employee to apply for the benefits as soon as she proceeds on leave. In the case of an employee who ceases work earlier in her pregnancy, she should apply two weeks prior to the maximum pre-natal benefit period which begins nine weeks before expected date of birth.

The employer must provide her with a document known as a "Separation Certificate" or "Record of Employment" which is necessary to establish the right to benefits.

Further details concerning unemployment insurance benefits should be obtained from your nearest branch of the Unemployment Insurance Commission.

Further Information

Contact the Women's Bureau, Human Rights Commission, Ministry of Labour, 400 University Avenue, Toronto, M7A 1T9, (or the nearest office of the Ontario Human Rights Commission) by letter or telephone — 965-1537.

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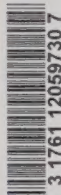
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